

MEMORANDUM OF LAW

DATE: May 1, 1990

TO: Phil D. Phillips, Accounting Division Manager
Auditor and Comptroller

FROM: City Attorney

SUBJECT: Redevelopment Agency Statement of Indebtedness and Tax
Increment Use

I am in receipt of your memorandum of February 16, 1990, in which you ask several questions regarding tax increment financing use by the Redevelopment Agency ("Agency"). Each will be dealt with separately.

Question 1

Confirm the legality of submitting a Statement of Indebtedness ("S.O.I.") to the County which includes items not listed in the Agency's Annual Financial Statements. These items include lease agreements, operating agreements, owner participation agreements, and disposition and development agreements.

Response

The items you list (and similar legal instruments evidencing a contract of some type) could legally be included on the Agency's S.O.I.

The California Constitution, article XIV, section 16, states that tax increment funds shall be used:

To pay the principal of and interest on loans, monies advanced to, or indebtedness (whether funded, refunded, assumed or other-wise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project.

A redevelopment project is "any undertaking of an agency pursuant to this part of Community Redevelopment Law." California Health and Safety Code section 33010.

The question then becomes, what is "indebtedness"? In regard to the type of obligations you list in your first question, the California Supreme Court stated in *Marek v. Napa Community Redevelopment Agency*, 46 Cal. 3d 1070, 1082 (1988), that indebtedness included "all redevelopment agency obligations, whether pursuant to an executory contract, a performed contract or to repay principal and interest on bonds or loans."

As you can see, contracts which are necessary to further a redevelopment project and which incur indebtedness can be listed on the Agency's S.O.I.

Question 2

Confirm the legality of using tax increment monies for non-debt redemption payment expense. Direct project expenses proposed by the City Manager fall into this category (list is attached as Addendum 1).

Response

Assuming that "debt redemption payment expenses" means debt service payments such as paying principal and interest on bonded indebtedness, tax increment monies may be used for non-debt redemption payment expenses. The items listed by the City Manager on page 2 of Addendum 1 would fall within allowable expenses. "The term "indebtedness" has no rigid or fixed meaning, but rather must be construed in every case in accord with its context.' It can include all financial obligations arising from contract . . . and it encompasses 'obligations which are yet to become due as well as those which have already matured.'" Id. at 1081 (citations omitted).

Question 3

Confirm the legality of using tax increment monies for direct project expenses not reported on the S.O.I.

Response

As indicated in the question immediately preceding this one, tax increment funds may be used to pay direct project expenses provided the expenses are in furtherance of the redevelopment project.

As you know, a S.O.I. must contain the date and "loan, advance, or indebtedness was incurred or entered into," the terms of that indebtedness, and the "outstanding balance and amount due to be paid by the agency." California Health and Safety Code section 33675(c)(1)(2)(3). The S.O.I. need not contain all the financial obligations necessary to be performed in order to fulfill the terms of the loan, advance or indebtedness.

Conclusion

It appears that the changes requested by the City Manager concerning the use of tax increment financing are legally permissible. Obviously, questions will arise from time to time as to a particular obligation but those should be dealt with as they occur.

If you have any questions or need additional information, please contact me.

JOHN W. WITT, City Attorney

By

Allisyn L. Thomas

Deputy City Attorney

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Attachment

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